UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

142424

NOV 30 2000

REPLY TO THE ATTENTION OF:
S-6J

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Martha E. Horvitz
Bricker & Eckler
100 S. Third Street
Columbus, Ohio 43215-4291

FAX: 614.227.2390

RE: Powell Road Landfill, Central State University, Docket No. V-W-00-C-589

Dear Ms. Horvitz:

Enclosed please find a signed copy of the final Central State University/Powell Road Landfill settlement administrative order on consent, Docket No. V-W-00-C-589. The public notice and comment period closed on October 10, 2000, and the administrative order on consent was signed by the United States Environmental Protection Agency. **This letter tells you that the settlement has now become effective.**

Consistent with paragraph 49 of the administrative order on consent, U.S. EPA informs you that the settlement is now effective. **The settlement payment that Central State University agreed to make must be paid within thirty (30) days after the date of this letter,** consistent with Section VI of the administrative order on consent.

Please contact Mr. Jeffrey A. Cahn, Associate Regional Counsel, at (312)886-6670 if you have any questions regarding this matter.

Sincerely yours,

for William E. Muno, Director,
Superfund Division

Enclosure

bcc: Jeffrey Cahn, ORC
Dina Dallianis, ORC
Anthony Rutter, RPM
Daniel Beckhard, U.S. DOJ

IN THE MATTER OF:	)	
	)	
POWELL ROAD LANDFILL DAYTON, MONTGOMERY COUNTY, OHIO	)	U.S. EPA REGION 5 CERCLA Docket No. V-W-'00-C-589
	)	
CENTRAL STATE UNIVERSITY	)	
	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
	)	42 U.S.C. § 9622(h)(1)

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I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and further delegated to the Director of the Superfund Division by Regional Delegation 14-14D (May 2, 1996). This Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Assistant Attorney General, Environment and Natural Resources Division.

2. This Agreement is made and entered into by EPA and Central State University ("Settling Party"). Settling Party consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Powell Road Landfill ("Site") located in Montgomery County, Ohio. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. Commercial, industrial, and domestic wastes were disposed of in the landfill, resulting in a release of hazardous substances. It is also believed that improper disposal of certain types of industrial wastes have occurred at the landfill, including ink waste, paint sludge, strontium, chromate and benzidine. In December 1984, EPA's Technical Assistance Team ("TAT") sampled 46 private residential wells. While sampling results identified low levels of volatile organic compounds ("VOCs") in six of the wells, EPA determined that an imminent and substantial endangerment to human health and the environment was not present at that time, and emergency actions were not required at that time. EPA did recommend, however, that several activities be conducted in that area, including a detailed Remedial Investigation ("RI") of the Powell Road Landfill. As a result of the release or threatened release of hazardous

substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In May 1986, EPA began performance of the Remedial Investigation/Feasibility Study ("RI/FS") at the Site. On November 12, 1987, the current site owner entered into an Administrative Order on Consent ("1987 AOC") with EPA. The 1987 AOC required the current owner to meet a number of requirements, including conducting an RI/FS and paying all past costs associated with the Site. The current owner completed and EPA approved the final RI report in March 1992. The RI identified the principal threats of contaminated media at the Site. These principal threats are landfill gases, contaminated groundwater, landfill liquids (leachate), and contaminated soils. The current owner completed and EPA approved the final FS report in March 1993. The Record of Decision ("ROD") was executed on September 30, 1993.

5. On June 13, 1994, U.S. EPA entered into an Administrative Order on Consent (U.S. EPA Docket No. V-W-94-C-239) (the "1994 AOC") with the State of Ohio, Capitol Varsity, Inc., General Motors Corporation, Koch Protective Treatments, Inc., and SCA. Under the 1994 AOC, Capitol Varsity, Inc., General Motors Corporation, Koch Protective Treatments, Inc., and SCA agreed to perform the Remedial Design ("RD") activities at the Site. The RD was completed and approved, with modification, by U.S. EPA, in consultation with the State, on December 5, 1997.

6. On January 23, 1997, U.S. EPA, in consultation with Ohio EPA, issued the an explanation of significant differences ("ESD") addressing groundwater issues (the "Groundwater ESD"). In the Groundwater ESD, U.S. EPA modified the remedy selected in the ROD by deferring the design and construction of the groundwater extraction and treatment system (the "Groundwater Component") until after implementation of all other components of the remedy selected in the ROD and until after the completion of a study of groundwater in the shallow aquifer adjacent to the landfill (scheduled to be completed by U.S. EPA prior to the first 5-Year Review). The period of time allocated for the study will allow groundwater an opportunity to travel from the northern (up gradient) edge of the landfill to the southern (down gradient) edge, with the other remedial components in place. As set forth in the Groundwater ESD, the study may include transport modeling, field or laboratory testing/modeling to estimate biodegradation, abiotic transformations, intrinsic bioremediation, dilution, dispersion and adsorption of groundwater contaminants as appropriate. At the end of the study, U.S. EPA will evaluate whether groundwater contamination

levels are rising, staying the same, or falling. Based on the study results, and as more fully described in the Groundwater ESD, U.S. EPA may: 1) require design and construction of the groundwater extraction and treatment system; 2) continue groundwater monitoring; 3) perform additional investigation of groundwater conditions; or 4) amend the ROD to modify or delete the Groundwater Component.

7. On May 13, 1997, U.S. EPA issued Deminimis Settlement offers to 182 eligible Deminimis Parties. At the date of this Order, sixty-nine (69) Deminimis generators and two (2) Deminimis transporters have settled their liability. The proceeds from these settlements were placed in a "Special Account".

8. On May 21, 1997, U.S. EPA sent Special Notice Letters to Central State University, Chrysler Corporation, DAP, Inc., Dayton Metropolitan Housing Authority, Delco (General Motors Corporation), Hobart Corporation (d/b/a PMI Food Equipment Group), Huber Homes, Allied Waste Systems, Inc., f/k/a Laidlaw Waste Systems, Inc., Pepsi-Cola Bottlers of Dayton, Waste Management of Ohio, Inc., United States Department of the Air Force (Wright Patterson Air Force Base) and Wright State University.

9. On August 13, 1997, U.S. EPA, in consultation with Ohio EPA, issued an ESD addressing leachate issues (the "Leachate ESD"). In the Leachate ESD, U.S. EPA modified the remedy selected in the ROD by changing the ROD's requirement that extracted leachate be treated only by an on-site leachate treatment system to instead allow: (1) treatment on-site of extracted leachate; (2) direct discharge of extracted leachate to the publicly owned treatment works ("POTW"), assuming all necessary and appropriate permits and approvals are first obtained; or (3) discharge of pre-treated extracted leachate to the publicly owned treatment works ("POTW"), assuming all necessary and appropriate permits and approvals are first obtained. One effect of the Leachate ESD is the deferral of the design and construction of any on-site leachate treatment system until after resolution of whether the necessary and appropriate permits and approvals can be issued for discharge to the POTW.

10. Based on receipt by U.S. EPA of a "good faith offer" from the Special Notice Parties, the 120-Day Moratorium was extended from September 25, 1997, until December 31, 1997. This extension was appropriate because it appeared at that time settlement was imminent. Settlement discussions continued after that date, and outside of the extended Moratorium period, until February 13, 1998. On February 13, 1998, the Special Notice

Parties indicated their unwillingness to implement the ROD remedy, as modified by the two ESDs, and to participate in the Consent Decree under terms acceptable to the United States. Accordingly, on that date U.S. EPA terminated negotiations.

11. On February 18, 1998, U.S. EPA issued a letter formally notifying the Special Notice Parties of the February 13, 1998, termination of negotiations on the Remedial Action Consent Decree due to the unwillingness of the Special Notice Parties to enter into the agreement. On May 6, 1998, U.S. EPA issued two unilateral administrative orders pursuant to Section 106 of CERCLA in Docket Nos. V-W-98-C-465 and V-W-98-C-466 to certain of the Special Notice Parties directing those Parties to perform the remedial action at the Site.

12. Further response actions planned at the site include initiation and completion of Remedial Action ("RA").

13. In performing response action at the Site, EPA has incurred response costs and will incur additional response costs in the future.

14. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at or in connection with the Site.

15. EPA has reviewed the Financial Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that Settling Party has limited financial ability and is able to pay the amounts specified in Section VI. Financial documents provided to EPA by Settling Party are cited in Appendix A. EPA's inability to pay determination concerning Settling Party is explained in Appendix A.

16. EPA and Settling Party recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

17. This Agreement shall be binding upon EPA and upon Settling Party, its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

18. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make a cash payment to resolve its alleged civil liability under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, subject to the reservations of rights included in Section IX (Reservations of Rights by EPA).

V. DEFINITIONS

19. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Financial Information" shall mean those financial documents identified in Appendix A.

f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

g. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean EPA and Settling Party.

i. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq. (also known as the Resource Conservation and Recovery Act).

j. "Section" shall mean a portion of this Agreement identified by a roman numeral.

k. "Settling Party" shall mean Central State University.

l. "Site" shall mean the Powell Road Landfill Superfund site, located in Huber Heights, Ohio, a suburb in the northern Dayton metropolitan area of Montgomery County, Ohio. The Site encompasses approximately 70 acres of the floodplain of the Great Miami River. The Landfill portion of the Site is generally designated by the following property description: 4060 Powell Road, in Huber Heights, Ohio, covering approximately 36.6 acres with a rise of 30 to 40 feet above the surrounding terrain. (The Site is described in the Record of Decision, and includes, but is not limited to, all property which has been contaminated as a result of a release from the facility and the adjacent areas).

m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

VI. REIMBURSEMENT OF RESPONSE COSTS

20. Within 30 days of the effective date of this Agreement as defined by Paragraph 49, Settling Party shall pay to the EPA Hazardous Substance Superfund $1,000. Payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of Settling Party,

the Site name, the EPA Region and Site/Spill ID # 05-H4, and the EPA docket number for this action, and shall be sent to:

U.S. EPA Superfund
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

The total amount to be paid pursuant to this Agreement shall be deposited in the Powell Road Landfill Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance the response action at or in connection with the Site. Any balance remaining in the Powell Road Landfill Special Account may be transferred by EPA to the EPA Hazardous Substance Superfund.

21. At the time of payment, Settling Party shall send notice that such payment has been made to:

Jeffrey A. Cahn C-14J
Associate Regional Counsel
U.S. Environmental Protection Agency - Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

VII. FAILURE TO COMPLY WITH AGREEMENT

22. If Settling Party fails to make any payment under Paragraph 20 by the required due date, Interest shall accrue on the unpaid balance from the date the payment is due through the date of payment.

23. If any amounts due under Paragraph 20 are not paid by the required date, Settling Party shall be in violation of this Agreement and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 22, $100 per violation per day that such payment is late.

24. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of Settling Party, the Site name, the EPA Region and Site/Spill ID # 05-H4, and the EPA docket number for this action, and shall be sent to:

U.S. EPA Superfund
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

At the time of each payment, Settling Party shall send notice that such payment has been made to:

Jeffrey A. Cahn C-14J
Associate Regional Counsel
U.S. Environmental Protection Agency - Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

25. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

26. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with any term or condition of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

27. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Paragraph 20 or from performance of any other requirements of this Agreement.

VIII. COVENANT NOT TO SUE BY EPA

28. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) with regard to the Site. With respect to present and future

liability, this covenant shall take effect upon receipt by EPA of "all amounts required by Section VI (Reimbursement of Response Costs) and any amount due under Section VII, Paragraphs 22 and 23 (Interest and Penalties for Late Payment)." This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Party. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Party shall forfeit all payments made pursuant to this Agreement and the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Settling Party's false or materially inaccurate information. This covenant not to sue extends only to Settling Party and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

29. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 28. Notwithstanding any other provision of this Agreement, EPA specifically reserves all rights against Settling Party with respect to:

a. liability for failure of Settling Party to meet a requirement of this Agreement;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability, based upon the ownership or operation of the Site or any activity with respect to a hazardous substance or a solid waste at or in connection with the Site, arising after signature of this Agreement by Settling Party; and

e. liability arising from the past, present, or future disposal, release, or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

30. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new

action, if the Financial Information provided by Settling Party, or the financial certification made by Settling Party in Paragraph 44(d), is false or, in any material respect, inaccurate.

31. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTY

32. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response activities at the Site; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

33. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

34. Settling Party agrees not to assert any claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

35. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a

Party to this Agreement. EPA reserves any and all rights, including, but not limited to, any right to contribution, defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

36. The Parties agree that Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by EPA or any other person with respect to the Site. The "matters addressed" in this Agreement do not include those response actions or those response costs as to which EPA has reserved its rights under Section IX of this Agreement (except for claims for failure to comply with this Agreement), in the event that EPA asserts rights against Settling Party coming within the scope of any such reservation.

37. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

38. In any subsequent administrative or judicial proceeding initiated by EPA or by the United States on behalf of EPA for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Paragraph 28.

XII. RETENTION OF RECORDS

42. Until 5 years after the effective date of this Agreement, Settling Party shall preserve and retain all documents or information now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

43. After the conclusion of the document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such documents or information, and, upon request by EPA, Settling Party shall deliver any such documents or information to EPA. Settling Party may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide the United States with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to EPA in redacted form to mask the privileged portion of the document or information only. Settling Party shall retain all documents or information that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor.

XIII. CERTIFICATION

44. By signing this Agreement, Settling Party certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents or information, and has fully and accurately disclosed to EPA, all documents or information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership,

possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any documents or information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site;

c. fully complied with any and all EPA requests for documents or information regarding the Site and Settling Party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e); and

d. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Party executes this Agreement.

XIV. NOTICES AND SUBMISSIONS

45. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Party.

As to the EPA:

Jeffrey A. Cahn C-14J
Associate Regional Counsel
U.S. Environmental Protection Agency - Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

As to Settling Party:

Andrew Hughey
General Counsel
Central State University
Wilberforce, OH 45384

XV. INTEGRATION/APPENDICES

46. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement:.

"Appendix A" is a list of the financial documents submitted to EPA by Settling Party, and an analysis of Settling Party's ability to contribute financially to the cleanup of the Site, prepared by EPA's financial consultant.

"Appendix B" is the map of the site.

XVI. PUBLIC COMMENT

47. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

48. The Attorney General or her designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XVIII. EFFECTIVE DATE

49. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 47 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

Central State University

By: Adolphus Andrews 2/4/00
[Name] [Date]
Adolphus Andrews, Vice President
Administration and Finance
Central State University

U.S. Environmental Protection Agency

By: Wm. E. Muno 4/20/00
William E. Muno, Director DATE
Superfund Division

INDUSTRIAL ECONOMICS, INCORPORATED

2067 Massachusetts Avenue Cambridge, Massachusetts 02140 Telephone 617/354-0074 Facsimile 617/354-0463

MEMORANDUM

24 February 1999

TO: Jeffrey A. Cahn, U.S. EPA Region 5

CC: Tracy Gipson, U.S. EPA OECA

FROM: Cynthia Y. So and Jonathan S. Sheffitz

SUBJECT: Ability to Pay Assessment of Central State University

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Superfund Site

Powell Road
SS ID#: 05-H4

Potentially Responsible Party

Central State University
Wilberforce, Ohio 45384

Documents Supplied

- Audited balance sheets as of July 30, 1995, December 31, 1996, and June 30, 1997;
- Central State University's current budget for fiscal year ended June 30, 1999;
- Annual Budget Message dated July 1, 1998; and,
- Selected sections of S.B. 6, effective June 20, 1997 and H.B. 215, effective June 30, 1997.

Summary and Conclusions

This memorandum presents the results of an assessment of the financial condition of Central State University (CSU) in Wilberforce, Ohio. We conducted this assessment to determine CSU's ability to pay for cleanup costs at the Powell Road Superfund site.

Our current assessment is that CSU can afford to contribute only a relatively nominal amount. Our opinion is based on the following analyses:

- The University's financial performance has been very poor in recent years;
- CSU has no currently available resources; and,
- CSU has little or no excess debt capacity from which to raise additional funds.

The memorandum's three sections support the conclusions above. First, we provide an overview of CSU's recent financial difficulties. Next, we analyze CSU's current funds, a possible source of currently available cleanup monies. Moving beyond currently available resources, we then analyze the funds available through future financing, which would entail utilizing additional debt capacity.

Based on these analyses, we conclude that CSU can afford to contribute only a relatively nominal amount. One reasonable approach would be based on a $10 fee per student for each of the next four years, which — given current enrollment figures — would translate into about $37,000.

Central State University's Recent Financial Difficulties

CSU has only recently regained control of its fiscal affairs from the State Office of Budget and Management, although the University has remained in an official state of "fiscal exigency" for fiscal years 1998 and 1999. Furthermore, effective July 1, 1999 CSU will be subjected to the requirements of the Ohio Revised Code, essentially placing CSU in a state of "fiscal watch."[1]

This status follows from CSU's having run up cash flow shortages and operating deficits so dire that the University's Board of Trustees approved borrowing against its Endowment Fund in fiscal years 1993, 1994, and 1995, for a total of approximately $1.9 million. The net amount due to the Endowment Fund still exceeds $1 million and the University's Board of Trustees has not yet approved a repayment plan.

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[1] H.B. No. 215, Appropriations: 1998-1999 Budget Bill.

CSU had tried earlier to implement various cost-cutting measures — such as refusing to implement faculty pay increases and laying off faculty members — but these have backfired. As a result, the University now faces approximately $2.9 million in arbitration awards.

In addition to the standard annual assistance CSU receives, in March 1997 the Ohio General Assembly determined that CSU was in such financial straits that it approved a bill providing $10.3 million in supplemental appropriation for emergency aid to CSU to pay past-due bills and provide operating funds. Through June 30, 1997, the University had drawn on $2.9 million. By approval of this bill, the State also forgave a $1.5 million loan that was made in April 1995 by the State to the University. These grants are not expected to continue in future years.

Perhaps related to CSU's financial difficulties are its management difficulties. For the past three years, CSU's accounting firm has not expressed an opinion on the certain aspects of the University's annual financial statements (i.e., statement of changes in fund balances and current funds revenues, expenditures, and other changes). The accounting firm has cited the University's major deficiencies in its accounting records and system of internal controls. These are the first financial statements we have ever seen to be essentially declared "unauditable."

Currently Available Resources

Government entities and not-for-profit organizations, such as universities, apportion their assets among a number of self-balancing accounting entities known as funds. Each fund serves a specific purpose. CSU's funds include:

- **current funds**, which include both restricted and unrestricted monies and cover most routine operations;
- **loan funds**, which include resources available for loans to students;
- **endowment funds**, which include resources invested with only the investment income available for purposes established by the donor or University; and
- **plant funds**, which relate to the physical plant of the University.

CSU's various current funds account for such basic university functions as general administration, student housing and dining, faculty salaries, and activities. The current funds are also a potential source of currently available resources for a cleanup cost contribution. As of June 30, 1997, however, CSU's current funds were running a negative balance of $2.5 million. Moreover, in recent years the deficit of the current funds has been as large as $11.6 million.

Since the other fund types are very restricted in their financing, we conclude that CSU has no currently available resources for a cleanup contribution.

Funds Available Through Future Financing

As of June 30, 1997, CSU already had $4.2 million in long-term debt. As stated earlier, CSU has received assistance from the State to pay past due bills as well as forgiveness of a $1.5 million loan.

Furthermore, although the Department of Education requires the University to maintain a Debt Service Payment account and a Debt Service Reserve account, CSU has repeatedly violated many conditions of these requirements. We conclude that CSU clearly lacks the financial resources, stability, and controls to take on any additional debt.

APPENDIX B

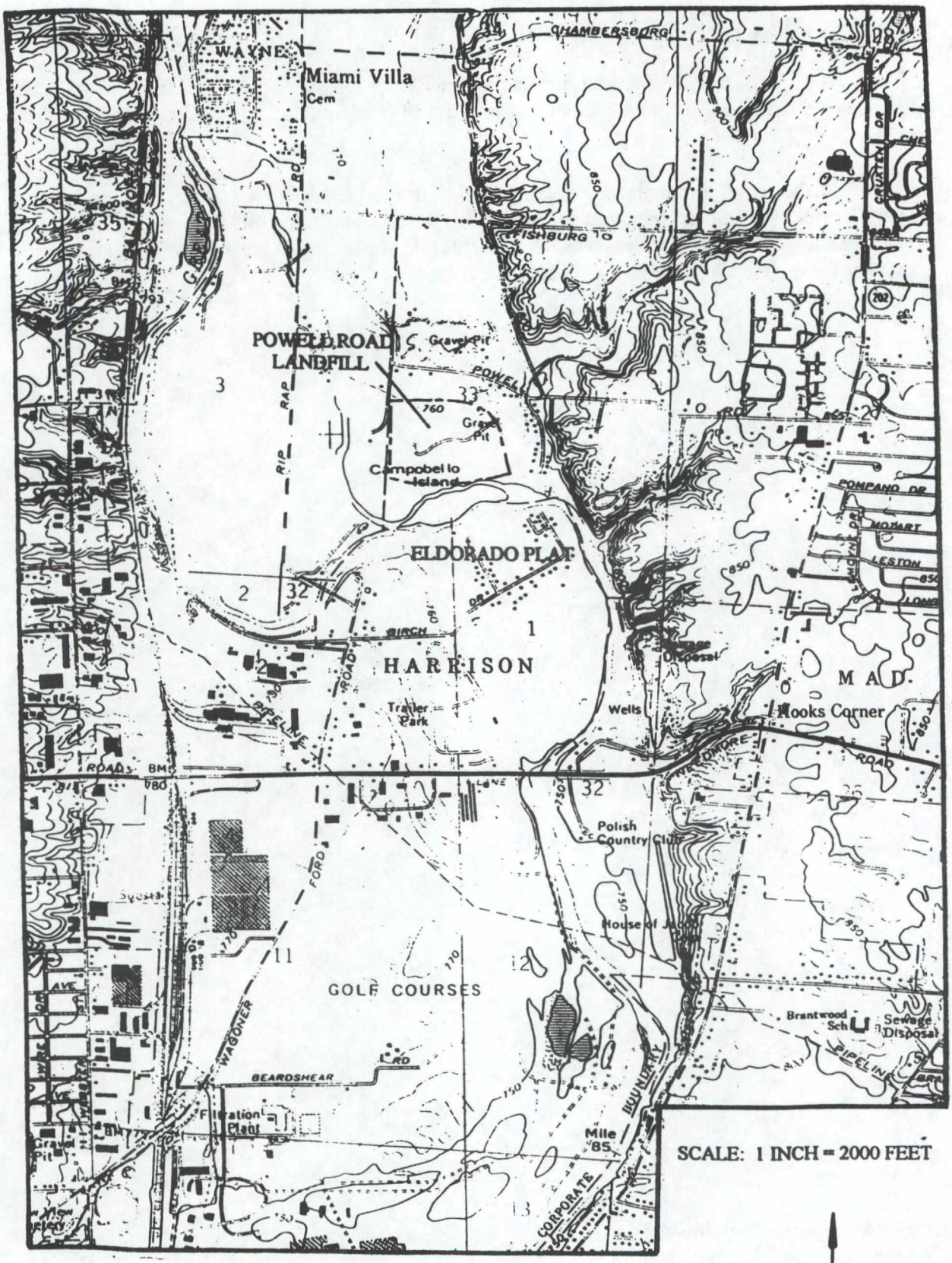

FIGURE 1. GENERAL LOCATION MAP